

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.2831 OF 1997

DATED 05-02-2007

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Between:-

P. Satyanarayana Rao

.. Petitioner

And

The A.P. State Road Transport
Corporation represented by its
Managing Director, Administrative
Office at Charminar Cross Roads,
Hyderabad and others.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.2831 OF 1997

ORDER:

The question which arises for consideration in this writ petition is as to whether the appellate authority, under the A.P.S.R.T.C. Regulations, is empowered to review the order, of the disciplinary authority, in order to enhance the punishment.

The petitioner, a conductor in the A.P. State Road Transport Corporation (for short 'the APSRTC') was charge sheeted. An enquiry was conducted and, on the Enquiry Officer holding that the charges were held established, the Disciplinary Authority, vide proceedings dated 04.01.1997, imposed on him the punishment of withholding of annual increments for a period of two years which would have its effect on his future increments. The petitioner was asked to show cause as to why the suspension period should not be treated as not on duty. Consequent thereto, the petitioner was directed to report before the Regional Manager, Nalgonda for further posting orders. The Deputy Chief Traffic Manager, Nalgonda, vide proceedings dated 01.02.1997, in exercise of the powers conferred under Regulation 29 of the Andhra Pradesh State Road Transport Corporation Employees' (Classification, Control and Appeal) Regulations, 1967 (for short 'the Regulations') as the concerned higher authority, reviewed the order dated 04.01.1997 of the Depot Manager, Kodad holding that a lesser penalty, than the one which ought to have been issued, was imposed by the Depot Manager. The 2nd respondent held that the present case

was serious in nature involving cash and ticket irregularities and since all the three charges levelled against the petitioner were proved beyond reasonable doubt and the petitioner had with a mala fide intention sought to defraud the legitimate revenues of the Corporation and had committed a technical fraud by not entering the ticket numbers in the S.R. at three stages but had mentioned only the first number in the first digit column stage so that he could conveniently fill up the other two digits if he could find time before the check, if any, taking place. The 2nd respondent held that, since the charges held established were grave in nature, he had provisionally come to the conclusion to modify the punishment imposed by the Depot Manager, Kodad, and to impose the penalty of removal from service, which he considered as a fit and proper punishment.

Sri Y.V. Ravi Prasad, learned counsel for the petitioner, would submit that the impugned show cause notice is without jurisdiction. Learned counsel would refer to Regulation 29 of the Regulations to submit that, while a higher authority could on its own motion call for the records in a disciplinary proceedings and review any order passed therein, such a power of review should be exercised as if the employee had preferred an appeal against such an order. Learned counsel would submit that since an employee would only prefer an appeal against the order of the disciplinary authority seeking that the order be set aside or that a lesser punishment be imposed, it was not open to the higher authority, in exercise of the powers conferred under Regulation 29 of the Regulations, to review the order and enhance the penalty imposed by the disciplinary authority. Learned counsel would place reliance on an order of this Court in W.P.No.11131 of 1983 dated 19.11.1987. Learned counsel would submit that, since the impugned order dated 04.01.1997 is itself a show cause notice, the power of review under Regulation 29 of the Regulations could not be

exercised to review a show cause notice issued by the disciplinary authority and, therefore, the impugned order is without jurisdiction. He would rely on **G.Ganapathi Rao vs. Depot Manager, APSRTC, Eluru** (Judgment in W.P.No.2334 of 1975 dated 06.10.1976).

Sri V.T.M. Prasad, learned Standing Counsel for the respondent- Corporation, on the other hand, would contend that the 2nd respondent, being admittedly a higher authority, had the power to review the order passed by the disciplinary authority and, since the charges held established against the petitioner are grave and serious in nature, the authority was justified in seeking to enhance the penalty proposed to be imposed. Learned counsel would contend that the interpretation placed on Regulation 29 of the Regulations was erroneous and would needlessly restrict the power of review conferred on higher authority and would disable them from seeking to enhance the penalty even in cases where charges held established are grave and serious in nature. Learned counsel would submit that, in any event, Regulation 30 of the Regulations empowers the higher authority to suo motu enhance the penalty proposed and the mere fact that a wrong provision was quoted in the order, as long as the Regulations confer power on the authority to enhance the penalty, no interference was called for by this Court in proceedings under Article 226 of the Constitution of India.

Before examining the rival contentions, it is necessary to refer, in brief, to the Rules and Regulations applicable to employees of the respondent-Corporation. Rule 3 of Andhra Pradesh State Road Transport Corporation Rules, 1958 relates to the constitution of the Corporation and under clause (1) thereof, the Corporation shall consist of ten members including the Chairman, out of which eight shall be nominated by the State Government as their representatives and two

will be nominated by the Railways as their representatives. The State Government may appoint one or more of their representatives to be whole time members of the Corporation. In exercise of the powers conferred under Section 45 (1) of the Road Transport Corporation Act (for short 'the Act), the Regulations were made. These Regulations apply to all employees of the Corporation. Regulation 3 (v) defines "Corporation" to mean the Andhra Pradesh State Road Transport Corporation established under Section 3 of the Act. Regulation 8 prescribes penalties and Regulation 10 prescribes the authority competent to impose the penalties. Regulation 12 prescribes the procedure for imposing penalties. Part V relates to suspension and Regulation 21 provides for the pay and allowances and treatment of service of an employee who is reinstated after the order of suspension is revoked. Part VI deals with appeals and part VII deals with review.

Regulations 29 and 30 thereunder read thus:

29. Review of orders in disciplinary case:

The authority to which an appeal against an order imposing any of the penalties specified in regulation 8 lies or a higher authority may, of its own motion or otherwise, call for the records of the case in disciplinary proceedings, review any order in such a case and pass such orders as it deems fit, as if the employee had preferred an appeal against such order.

Provided that no action under this regulation shall be initiated more than six months after the date of the order to be reviewed.

30. Corporation's power of revision:

Notwithstanding anything contained in these Regulations, the Corporation may, on its own motion or otherwise, after calling for the records of the case, revise any order which is made or is appealable

under these Regulations; and

- (a) impose any penalty or confirm, modify or set aside the order; or
- (b) remit the case to the authority which made the order or to any other authority, directing such further action or inquiry as it considers proper in the circumstances of the case; or
- (c) pass such other orders as it deems fit:

Provided that-

- (i) an order imposing or enhancing a penalty shall not be passed unless the employee concerned has been given an opportunity of making any representation which he may wish to make against such penalty; and
- (ii) if the Corporation proposes to impose any of the penalties specified in items (viii) and (ix) of regulation 8 in a case where an inquiry in accordance with the provisions of clauses (2) to (14) of regulation 12 has not been held, it shall, subject to the provisions of regulation 13, direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry, pass such orders it may deem it.

Under Regulation 29, the appellate authority or a higher authority may, on its own motion or otherwise, call for the records in a disciplinary proceedings, review any order in such a case and pass such orders as it deems fit, **as if the employee had preferred an appeal against such an order** (emphasis applied). The very same Regulation 29 came up for consideration before this Court in W.P.No.11131 of 1983 and a learned Single Judge of this Court, by order dated 19.11.1987,

observed thus:-

“.....The main part of the order postulates that irrespective of the fact whether an appeal has been filed by the employee against an order passed by the competent authority imposing any of the penalties specified in Regulation 8, either of its own motion or otherwise, the appellate authority or higher authority is empowered to call for the records of the case relating to the disciplinary proceedings and review such an order as if the employee had preferred an appeal against such an order. The question, therefore, is whether an order passed favourable to an employee by the original authority or the appellate authority, could the reviewing authority or the higher authority review and revise such an order. Though Sri Haranath, learned standing counsel for the Corporation has strenuously contended that the higher authority does have jurisdiction and power to review against the order passed by the appellate authority and revise the penalty, I am afraid, on the language used in the Regulation, such a power cannot be inferred or interpreted to inhere. As already seen, the higher authority is given power to review the order of the disciplinary authority—be it original authority or appellate authority. But when it is intended that it should be treated as if it is an appeal filed by the delinquent employee, it necessarily postulates that if an order adverse to the delinquent is passed despite the fact that no appeal has been filed by him within the specified period, the appellate authority or higher authority is competent to review the order only beneficial or favourable to the delinquent employee. But if they want to review the order passed by the disciplinary authority or the appellate authority favourable to the delinquent officer, then this review power could be availed of, on the language so couched. But if it could be used adverse to the delinquent, it does not empower the authority for diverse reasons. The

reviewing authority cannot pass an order treating it to be an appeal by the delinquent.....”

The order of this Court in W.P.No.11131 of 1983 dated 19.11.1987, no doubt, supports the contention now urged by Sri Y.V. Ravi Prasad. While the interpretation placed by the learned Single Judge to Regulation 29 is not free from doubt, I do not consider it necessary, in the facts of the present case, to differ therefrom and to refer the matter to a Division Bench in view of reasons to be stated infra. Insofar as the other contention of Sri Y.V. Ravi Prasad, placing reliance on **G.Ganapathi Rao** is concerned, the Division Bench of this Court held that a show cause notice cannot be construed as an order which could be reviewed or revised by a higher authority and that it was not the intention of the framers of Regulation 29 to empower the higher authority to review even a show cause notice. While observing that Regulation 29 did not provide for issuance of a notice before passing of the Order, the Division Bench observed that it was well settled that when an order is passed affecting the rights of the parties, even if the provision empowering the authority to pass such orders does not contain any requirement to issue a notice, such a requirement should be read into the said Rule or Regulation as it would always be presumed that the intention of the legislature was to conform to principles of natural justice. It is necessary to note that the writ petition in **G.Ganapathi Rao** arose prior to the 42nd amendment of the Constitution, whereby the requirement of issuing a show-cause notice against the proposed punishment was deleted. Consequent thereto various public sector undertakings and statutory corporations have amended their Rules dispensing with this requirement of providing for a show-cause notice to be issued against the proposed punishment. In this context, reference can usefully be made to the Judgment in **Associated Cement Companies Limited v. T.C. Shrivastava**^[1],

wherein the Supreme Court observed at Paragraph 8 thus:-

“ ... It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity.....”

In view of the subsequent Judgment of the Supreme Court in **Associated Cement Companies Limited**, the earlier Division Bench Judgment in **G.Ganapathi Rao**, is no longer good law. In any event, the order dated 04.01.1997, is not a show cause notice insofar as imposition of punishment of withholding of annual increments for a period of two years is concerned. While imposing the aforesaid punishment, the Depot Manager, Kodad, asked the petitioner to show cause as to why the suspension period should not be treated as not on duty. It was only to the limited extent of the petitioner being required to show-cause as to why his period of suspension should not be treated as not on duty, is the proceedings dated 04.01.1997, a show cause notice. However, insofar as the imposition of punishment of withholding of annual increments for a period of two years is concerned, it is a final order of punishment. As such the submission of Sri Y.V. Ravi Prasad, learned counsel for the petitioner, does not merit acceptance.

Regulation 30 of the Regulations empowers the Corporation, suo motu, to call for the records and revise any order enhancing the penalty imposed on an employee. All that Regulation 30 (c) (i) and (ii) requires is that the Corporation, before imposing the enhanced

penalty, must give an opportunity to the employee concerned of making a representation which he desires to make. In view of the Judgment of this Court, in W.P.No.11131 of 1983 dated 19.11.1987, the appellate authority or a higher authority, in exercise of the powers under Regulation 29 of the Regulations, cannot enhance the penalty imposed by the disciplinary authority. However such a power is specifically available under Regulation 30 of the Regulations. It is well settled by a catena of Judgments of the Supreme Court, including in **M/s Pine Chemicals Limited v. Assessing Authority**^[2], and this Court in Writ Appeal No.1360 of 1999 dated 31.03.2001, that neither non-mention of a provision of law nor a wrong mention thereof is fatal, when enabling power exists under the statutory regulations. As such the mere fact that a wrong provision has been referred to would not oust the jurisdiction of the authority concerned to enhance the penalty so long as the statutory regulations enable it to do so. Regulation 30 undoubtedly empowers the records to be called for suo motu and the penalty to be enhanced. It cannot, however, be lost sight of that the power to revise under Regulation 30 is conferred specifically on the Corporation and not on the 2nd respondent. As noted above, under Section 3 of the Act and Rule 3 of the Rules, a Corporation has been defined to mean the Board in Management. The power to revise the order passed by the disciplinary authority, and to enhance the penalty under Regulation 30, has been specifically conferred only on the Corporation and not on the 2nd respondent. As such the impugned show cause notice issued by the 2nd respondent is without jurisdiction and is accordingly quashed. It is made clear that this order shall not preclude the Corporation, if it so chooses, from exercising its powers under Regulation 30 of the Regulations.

The writ petition is allowed. However, in the circumstances,

without costs.

RAMESH RANGANATHAN, J

5TH February, 2007.
IBL/SH

[\[1\]](#) AIR 1984 SC 1227

[\[2\]](#) (1992) 2 SCC 683